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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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COMMENTS IN OPPOSITION TO REALLOTMENT PROPOSAL

Ronald L. Ulloa (“Ulloa”), a member of Provo Broadcasting, LLC,¹ in his individual capacity, by his attorneys and pursuant to Sections 1.415 and 1.420 of the Commission’s Rules, hereby respectfully submits these Comments in Opposition to the television channel reallocation proposals advanced in Commission’s *Notice of Proposed Rule Making* in the above-captioned proceeding, DA 01-2736, released November 23, 2001 (“NPRM”).

The NPRM seeks comment on proposals to amend the TV Table of Allotments in a fashion that would result in withdrawal of proposed television service from the communities of Ely, Utah and Vernal, Nevada. The Commission's proposals are based on a Petition for Rule Making and supplemental materials filed by TV 6, L.L.C., the permittee of Station KBCJ(TV), Channel 6, Vernal, Utah, and Kaleidoscope Foundation, Inc., the permittee of Station

¹Provo Broadcasting, LLC is the permittee of a new television station to be operated on Channel 32 at Provo, Utah. Provo is in the immediate vicinity of Santaquin, Utah.

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KBNY(TV), Channel 6, Ely, Nevada (collectively, the “Petitioners”). They propose reallocation of NTSC television Channel 6 from Vernal to Santaquin, Utah (just south of Provo, Utah), and NTSC television Channel 6 from Ely to Caliente, Nevada (north of Las Vegas, Nevada) and modification of the construction permits for the Stations to specify Santaquin and Caliente, respectively, as the Stations’ communities of license.

The reallocations of the two Channel 6 stations (the geographic proposals for which will avoid co-channel interference) have been coordinated so that the Vernal allotment will be moved approximately 130 miles west from the rural community of Vernal in order to create a new station serving the Salt Lake City-Provo, Utah television market, with the Nevada allotment shifted about 120 miles south, toward Las Vegas, Nevada. For these proposals to come to fruition, it would amount to the loss of the only local transmission service from one and perhaps both of the two isolated communities. Such an allocations development would be at odds with long standing Commission precedent – precedent that was reaffirmed in the Commission’s rulemaking decision concerning the rules and policies to govern changes in a station’s community of license. *Modification of FM and TV Authorizations to Specify a New Community of License, Memorandum Opinion and Order*, 5 FCC Rcd 7094, 7096 (1990).

Petitioners seek to justify their proposals based on Mass Media Bureau decisions, primarily involving FM radio allotments, wherein the Bureau has taken the position that the prohibition against the “removal of a sole transmission service” does not apply where the station is “unbuilt.”² However, as supported below, these cases may not be relied upon to justify the proposals embodied in the instant rule making. No previous television reallocation case (and

² The petitioners rely upon *Farmington and Gallup, NM*, 11 FCC Rcd 2357 (1996) – a television reallocation case – to support this proposition. Also offered in support is a series of more recent radio cases wherein the Commission has allowed for removal of the only proposed local transmission service where the station had not yet gone on the air.

there appears to be only one reported one) has involved such a long-distance geographic shift in an allotment where such a change would deprive a community of its only local transmission service forever. Furthermore, the limited television precedent in this area did not occur in the context of the now ongoing conversion to digital transmission technology. Because neither Ely, Nevada, nor Vernal, Utah, has a paired DTV allotment that would remain allotted to the communities, the adoption of the Commission's reallocation proposals would deprive each community of all or at least a critical components of these communities' prospects for over-the-air digital television service in a coming era when that will be the sole form of television transmission service.

Looking first at the cases – radio and television – cited by Petitioners to support their plan for reallocation, none of the cases involved a geographic shift of the magnitude proposed here. Here the Petitioners propose alterations in the table that would result in allotment changes that depart radically from the service expectations upon which these allotments were based as the result of the Commission's previous public interest determination to add the rural communities of Ely and Vernal to the allotments in the Table. Thus, the cited allotment cases, each involving much more modest geographic changes in the location of channel allotments, cannot be relied upon so justify the wholesale shift of two allotments in the Television Table.

Furthermore, losses of local transmission service in FM radio – the context of the bulk of the cases cited by Petitioners – can be distinguished from what might appear to be similar losses of television service. Indeed, they are different. Actions in the FM allocations arena must be considered in light of the likely reception availability of a multiplicity of other FM (and AM) stations and, as compared to television allotments, the relative ease of creating additional and

shifted FM allotments, as well as additional changes and additions to AM radio transmission and services.

Additions, losses and other changes to television allotments have an effect of much greater gravity to the service potential for particular communities. That always has been so in the context of conventional NTSC analog service. But, these concerns take on even greater proportions in an era of digital conversion and the future of over-the-air television service to the American public.³

The process of converting the domestic, over-the-air television service to digital transmission is a highly complex undertaking, involving difficult engineering and policy processes. The spectrum currently allotted to television broadcasting is being used to its fullest in the effort to foster the digital transition and to accommodate as many stations as possible with a paired DTV channel.

The Commission's digital television table of allotments (Section 73.622 of the Commission's Rules) does not include *any* digital allotments for either Ely, NV, or Vernal, UT. In situations such as this, digital television would be offered to the local viewing public only when an NTSC station chooses (or is required under federal law) to abandon analog service and begin offering digital service over the channel over which the station previously offered analog service.

As such, the prospects for over-the-air digital television service, over the near term, is limited where no paired channel exists. And if the channel which would be used now for NTSC and in the future for digital is moved out of the community, the damage to free, over-the-air digital service is of even greater consequence.

³ Likewise, given the compression of the television band into a core group of channels, there is little likelihood that Vernal will be allotted another digital channel.

In other words, the Commission – in the context of broadcast television – now should have much greater concern over the loss of television service, particularly where such a loss would amount to elimination of most if not all prospects for a local over-the-air digital transmission service. The limited FCC television precedent, adopted in an analog-only era, should not be relied upon where, as here, the stakes in free, over-the-air digital television service are involved. Instead, the Commission must preserve the opportunity for digital television service for the residents of Vernal, Utah and the Station's proposed service area.

CONCLUSION

For the above-stated reasons, the Commission should not adopt the proposals advanced in the above-captioned NPRM. Instead, it is urged that the Commission acknowledge – in its forthcoming *Report and Order* in this proceeding – adherence to a set of television channel reallocation principles that take into consideration the critical importance of preserving options for delivering over-the-air digital television service to all communities, including those expecting such service from the Stations involved in the instant proceeding.

Respectfully submitted,

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January 14, 2002

CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 14th day of January 2002, served a copy of the foregoing, "Comments In Opposition" upon the following parties by first-class mail, postage prepaid:

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